

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2252

Introduced by Assembly Member Ting

February 18, 2016

An act to amend ~~Section 15104~~ Sections 301, 303.3, 362, 19271, 19280, 19281, 19283, 19284, 19285, 19286, 19287, 19288, 19290, 19291, 19292, 19293, 19294, and 19295 of, to amend the heading of Chapter 3.5 (commencing with Section 19280) of Division 19 of, to add Section 305.5 to, and to repeal Section 19282 of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 2252, as amended, Ting. Elections: ~~vote by mail ballots; remote accessible vote by mail systems.~~

Existing law regulates the voting procedures for military or overseas voters and provides that a military or overseas voter has the right to register for, and to vote by a vote by mail ballot in, any election within the state. Existing law defines a "ballot marking system" as any mechanical, electromechanical, or electronic system and its software that is used for the sole purpose of marking a ballot for a military or overseas voter.

This bill would rename a "ballot marking system" as a "remote accessible vote by mail system." The bill would define a "remote accessible vote by mail system" as a mechanical, electromechanical, or electronic system and its software that is used for the sole purpose of marking an electronic vote by mail ballot remotely, outside a polling location, for a voter with disabilities or a military or overseas voter who would then be required to print the paper cast vote record to be

submitted to the elections official. The bill would also make conforming changes.

~~Existing law requires the processing of vote by mail ballot return envelopes, and the processing and counting of vote by mail ballots, to be open to the public, both before and after the election. Existing law authorizes certain parties to observe and challenge the manner in which the vote by mail ballots are handled, as specified, and requires the vote by mail voter observers to be allowed sufficiently close access to enable them to (1) observe the vote by mail ballot return envelopes and the signatures on the envelopes, and (2) challenge whether the individuals handling vote by mail ballots are following established procedures, including, among other things, verifying signatures and addresses on the vote by mail ballot return envelopes by comparing them to voter registration information.~~

~~This bill would delete the verification of addresses on the vote by mail ballot return envelopes from the established procedures that are subject to observer challenge.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 301 of the Elections Code is amended to
2 read:

3 301. A “ballot” means any of the following:

4 (a) ~~A single~~ *The combination of a card with prescored, number*
5 positions that is marked by the voter ~~with a punching device~~ and
6 the accompanying reference page or pages containing the names
7 of candidates and the ballot titles of measures to be voted on with
8 numbered positions corresponding to the numbers on the card.

9 (b) One or more cards upon which are printed the names of the
10 candidates and the ballot titles of measures to be voted on by
11 punching or marking in the designated area.

12 (c) One or more sheets of paper upon which are printed the
13 names of candidates and the ballot titles of measures to be voted
14 on by marking the designated area and that are tabulated manually
15 or by optical scanning equipment.

16 (d) ~~A large sheet of paper upon which is printed the names of~~
17 candidates and ballot titles of measures to be voted on by pressing
18 the designated area on a direct-recording electronic device.

(e)

(d) An electronic touchscreen upon which appears the names of candidates and ballot titles of measures to be voted on by touching the designated area on the screen ~~of a direct-recording electronic device~~ for systems that do not contain a paper ballot.

SEC. 2. Section 303.3 of the Elections Code is amended to read:

303.3. ~~“Ballot marking—~~“Remote accessible vote by mail system” means a mechanical, electromechanical, or electronic system and its software that is used for the sole purpose of marking ~~a an electronic vote by mail ballot for a voter with disabilities or a military or overseas voter and is not who shall print the paper case vote record to be submitted to the elections official. A remote accessible vote by mail system shall not be connected to a voting system at any time.~~

SEC. 3. Section 305.5 is added to the Elections Code, to read:

305.5. “Paper cast vote record” means an auditable document that corresponds to the selection made on the voter’s ballot and lists the contests on the ballot and the voter’s selections for those contests. A paper cast vote record is not a ballot.

SEC. 4. Section 362 of the Elections Code is amended to read:

362. “Voting system” means a mechanical, electromechanical, or electronic system and its software, or any combination of these used for casting a ballot, tabulating votes, or both. “Voting system” does not include a ~~ballot marking~~ remote accessible vote by mail system.

SEC. 5. Section 19271 of the Elections Code is amended to read:

19271. As used in this article:

(a) “Accessible” means that the information provided on the ~~paper record copy~~ cast vote record from the voter verified paper audit trail mechanism is provided or conveyed to voters via both a visual and a nonvisual method, such as through an audio component.

(b) “Direct recording electronic voting system” means a voting system that records a vote electronically and does not require or permit the voter to record his or her vote directly onto a tangible ballot.

(c) “Voter verified paper audit trail” means ~~a component of a direct recording electronic voting system that prints a~~

1 contemporaneous paper record copy of each electronic ballot and
2 allows each voter to confirm his or her selections before the voter
3 casts his or her ballot. *paper cast vote record containing a copy*
4 *of each of the voter's selections that allows each voter to confirm*
5 *his or her selections before the voter casts his or her ballot for*
6 *systems that do not contain a paper ballot.*

7 (d) "Federal qualification" means the system has been certified,
8 if applicable, by means of qualification testing by a nationally
9 recognized test laboratory and has met or exceeded the minimum
10 requirements set forth in the Performance and Text Standards for
11 Punch Card, Mark Sense, and Direct Recording Electronic Voting
12 Systems, or in any successor voluntary standard document,
13 developed and promulgated by the Federal Election Commission,
14 the Election Assistance Commission, or the National Institute of
15 Standards and Technology.

16 (e)

17 (d) "Paper record copy" *cast vote record* means an auditable
18 document printed by a voter-verified paper audit trail component
19 that corresponds to the *selection made on the voter's electronic*
20 *vote ballot* and lists the contests on the ballot and the voter's
21 selections for those contests. A paper record copy *cast vote record*
22 is not a ballot.

23 (f)

24 (e) "Parallel monitoring" means the testing of a randomly
25 selected sampling of voting equipment on election day designed
26 to simulate actual election conditions to confirm that the system
27 is registering votes accurately.

28 SEC. 6. The heading of Chapter 3.5 (commencing with Section
29 19280) of Division 19 of the Elections Code is amended to read:

30
31 CHAPTER 3.5. CERTIFICATION OF ~~BALLOT MARKING~~ REMOTE
32 ACCESSIBLE VOTE BY MAIL SYSTEMS

33
34 SEC. 7. Section 19280 of the Elections Code is amended to
35 read:

36 19280. The Secretary of State shall not certify or conditionally
37 approve a ~~ballot marking~~ remote accessible vote by mail system,
38 or part of a ~~ballot marking~~ remote accessible vote by mail system,
39 unless it fulfills the requirements of this code and the regulations
40 of the Secretary of State.

1 *SEC. 8. Section 19281 of the Elections Code is amended to*
2 *read:*

3 19281. (a) ~~A ballot marking~~ *remote accessible vote by mail*
4 system, in whole or in part, shall not be used unless it has been
5 certified or conditionally approved by the Secretary of State prior
6 to the election at which it is to be first used.

7 (b) All other uses of a ~~ballot marking~~ *remote accessible vote by*
8 *mail* system shall be subject to the provisions of Section 19202.

9 *SEC. 9. Section 19282 of the Elections Code is repealed.*

10 ~~19282. The Secretary of State shall not certify or conditionally~~
11 ~~approve any ballot marking system that includes features that~~
12 ~~permit a voter to produce, and leave the polling place with, a copy~~
13 ~~or facsimile of the ballot cast by the voter at that polling place.~~

14 *SEC. 10. Section 19283 of the Elections Code is amended to*
15 *read:*

16 ~~19283. (a) The Secretary of State shall adopt and publish~~
17 ~~standards and regulations governing the use of ballot marking~~
18 ~~systems. The Secretary of State may also adopt, in whole or in~~
19 ~~part, voluntary federal ballot marking voting system standards~~
20 ~~established by the United States Election Assistance Commission~~
21 ~~or its successor agency.~~

22 ~~(b) Ballot marking~~

23 ~~19283. Remote accessible vote by mail~~ system standards
24 adopted by the Secretary of State ~~pursuant to subdivision (a)~~ shall
25 include, but not be limited to, all of the following requirements:

26 ~~(1)~~

27 ~~(a)~~ The machine or device and its software shall be suitable for
28 the purpose for which it is intended.

29 ~~(2)~~

30 ~~(b)~~ The ~~ballot marking~~ *remote accessible vote by mail* system
31 shall preserve the secrecy of the ballot.

32 ~~(3)~~

33 ~~(c)~~ The ~~ballot marking~~ *remote accessible vote by mail* system
34 shall be safe from fraud or manipulation.

35 ~~(4)~~

36 ~~(d)~~ The ~~ballot marking~~ *remote accessible vote by mail* system
37 shall be accessible to voters with disabilities and to voters who
38 require assistance in a language other than English if the language
39 is one in which a ballot or ballot materials are required to be made
40 available to voters.

1 *SEC. 11. Section 19284 of the Elections Code is amended to*
2 *read:*

3 19284. (a) A person, corporation, or public agency owning or
4 having an interest in the sale or acquisition of a ~~ballot marking~~
5 *remote accessible vote by mail* system or a part of a ~~ballot marking~~
6 *remote accessible vote by mail* system may apply to the Secretary
7 of State for certification or conditional approval that includes
8 testing and examination of the applicant's system and a report on
9 the findings, which shall include the accuracy and efficiency of
10 the ~~ballot marking remote accessible vote by mail~~ system. As part
11 of its application, the applicant of a ~~ballot marking remote~~
12 *accessible vote by mail* system or a part of a ~~ballot marking remote~~
13 *accessible vote by mail* system shall notify the Secretary of State
14 in writing of any known defect, fault, or failure of the version of
15 the hardware, software, or firmware of the ~~ballot marking remote~~
16 *accessible vote by mail* system or a part of the ~~ballot marking~~
17 *remote accessible vote by mail* system submitted. The Secretary
18 of State shall not begin his or her certification process until he or
19 she receives a completed application from the applicant of the
20 ~~ballot marking remote accessible vote by mail~~ system or a part of
21 the ~~ballot marking remote accessible vote by mail~~ system. The
22 applicant shall also notify the Secretary of State in writing of any
23 defect, fault, or failure of the version of the hardware, software,
24 or firmware of the ballot marking system or a part of the ballot
25 marking system submitted that is discovered after the application
26 is submitted and before the Secretary of State submits the report
27 required by Section 19288. The Secretary of State shall complete
28 his or her examination without undue delay.

29 (b) After receiving an applicant's written notification of a defect,
30 fault, or failure, the Secretary of State shall notify the United States
31 Election Assistance Commission or its successor agency of the
32 problem as soon as practicable so as to present a reasonably
33 complete description of the problem. The Secretary of State shall
34 subsequently submit a report regarding the problem to the United
35 States Election Assistance Commission or its successor agency.
36 The report shall include any report regarding the problem submitted
37 to the Secretary of State by the applicant.

38 (c) As used in this chapter:

39 (1) "Defect" means any flaw in the hardware or documentation
40 of a ~~ballot marking remote accessible vote by mail~~ system that

1 could result in a state of unfitness for use or nonconformance to
2 the manufacturer's specifications or applicable law.

3 (2) "Failure" means a discrepancy between the external results
4 of the operation of any software or firmware in a ~~ballot marking~~
5 *remote accessible vote by mail* system and the manufacturer's
6 product requirements for that software or firmware or applicable
7 law.

8 (3) "Fault" means a step, process, or data definition in any
9 software or firmware in a ballot marking system that is incorrect
10 under the manufacturer's program specification or applicable law.

11 *SEC. 12. Section 19285 of the Elections Code is amended to*
12 *read:*

13 19285. The Secretary of State shall use a state-approved testing
14 agency or expert technicians to examine ~~ballot marking remote~~
15 *accessible vote by mail* systems proposed for use or sale in this
16 state. He or she shall furnish a complete report of the findings of
17 the examination and testing to the Governor and the Attorney
18 General.

19 *SEC. 13. Section 19286 of the Elections Code is amended to*
20 *read:*

21 19286. The person, corporation, or public agency applying for
22 certification of a ~~ballot marking remote accessible vote by mail~~
23 system is responsible for all costs associated with the testing and
24 examination of the ~~ballot marking remote accessible vote by mail~~
25 system.

26 *SEC. 14. Section 19287 of the Elections Code is amended to*
27 *read:*

28 19287. (a) Prior to publishing his or her decision to certify,
29 conditionally approve, or withhold certification of a ~~ballot marking~~
30 *remote accessible vote by mail* system, the Secretary of State shall
31 provide for a 30-day public review period and conduct a public
32 hearing to give interested persons an opportunity to review testing
33 and examination reports and express their views for or against
34 certification or conditional approval of the ~~ballot marking remote~~
35 *accessible vote by mail* system.

36 (b) The Secretary of State shall give notice of the public review
37 period and hearing in the manner prescribed in Section 6064 of
38 the Government Code in a newspaper of general circulation
39 published in Sacramento County. The Secretary of State shall also
40 provide notice of the hearing on his or her Internet Web site. The

1 Secretary of State shall transmit written notice of the hearing, at
2 least 14 days prior to the public review period and hearing, to each
3 county elections official, to any person that the Secretary of State
4 believes will be interested in the public review period and hearing,
5 and to any person who requests, in writing, notice of the public
6 review period and hearing.

7 (c) The decision of the Secretary of State to certify, conditionally
8 approve, or withhold certification of a ~~ballot-marking~~ remote
9 accessible vote by mail system shall be in writing and shall state
10 the findings of the Secretary of State. The decision shall be open
11 to public inspection.

12 *SEC. 15. Section 19288 of the Elections Code is amended to*
13 *read:*

14 19288. Within 60 days after the completion of the examination
15 of a ~~ballot-marking~~ remote accessible vote by mail system, the
16 Secretary of State shall make publicly available a report stating
17 whether the ~~ballot-marking~~ remote accessible vote by mail system
18 has been certified or conditionally approved, or whether
19 certification has been withheld.

20 *SEC. 16. Section 19290 of the Elections Code is amended to*
21 *read:*

22 19290. (a) If a ~~ballot-marking~~ remote accessible vote by mail
23 system has been certified or conditionally approved by the
24 Secretary of State, the vendor or, in cases where the system is
25 publicly owned, the jurisdiction shall notify the Secretary of State
26 and all local elections officials who use the system in writing of
27 any defect, fault, or failure of the hardware, software, or firmware
28 of the system or a part of the system within 30 calendar days after
29 the vendor or jurisdiction learns of the defect, fault, or failure.

30 (b) After receiving written notification of a defect, fault, or
31 failure pursuant to subdivision (a), the Secretary of State shall
32 notify the United States Election Assistance Commission or its
33 successor agency of the problem as soon as practicable so as to
34 present a reasonably complete description of the problem. The
35 Secretary of State shall subsequently submit a report regarding the
36 problem to the United States Election Assistance Commission or
37 its successor agency. The report shall include any report regarding
38 the problem submitted to the Secretary of State.

39 *SEC. 17. Section 19291 of the Elections Code is amended to*
40 *read:*

1 19291. If a ~~ballot-marking~~ *remote accessible vote by mail*
2 system has been certified or conditionally approved by the
3 Secretary of State, it shall not be changed or modified until the
4 Secretary of State has been notified in writing and has determined
5 that the change or modification does not impair its accuracy and
6 efficiency sufficient to require a reexamination and recertification
7 or reapproval pursuant to this chapter. The Secretary of State may
8 adopt rules and regulations governing the procedures to be followed
9 in making his or her determination as to whether the change or
10 modification impairs accuracy or efficiency.

11 *SEC. 18. Section 19292 of the Elections Code is amended to*
12 *read:*

13 19292. The Secretary of State may seek injunctive and
14 administrative relief if a ~~ballot-marking~~ *remote accessible vote by*
15 *mail* system has been compromised by the addition or deletion of
16 hardware, software, or firmware without prior approval or is
17 defective due to a known hardware, software, or firmware defect,
18 fault, or failure that has not been disclosed pursuant to Section
19 19284 or 19290.

20 *SEC. 19. Section 19293 of the Elections Code is amended to*
21 *read:*

22 19293. (a) The Secretary of State may seek all of the following
23 relief for an unauthorized change in hardware, software, or
24 firmware in a ~~ballot-marking~~ *remote accessible vote by mail* system
25 certified or conditionally approved in California:

26 (1) A civil penalty from the offending party or parties, not to
27 exceed ten thousand dollars (\$10,000) per violation. For purposes
28 of this subdivision, each ~~ballot-marking~~ *remote accessible vote by*
29 *mail* system component found to contain the unauthorized
30 hardware, software, or firmware shall be considered a separate
31 violation. A penalty imposed pursuant to this subdivision shall be
32 apportioned 50 percent to the county in which the violation
33 occurred, if applicable, and 50 percent to the office of the Secretary
34 of State for purposes of bolstering ~~ballot-marking~~ *remote accessible*
35 *vote by mail* system security efforts.

36 (2) Immediate commencement of proceedings to withdraw
37 certification or conditional approval for the ~~ballot-marking~~ *remote*
38 *accessible vote by mail* system in question.

1 (3) Prohibiting the manufacturer or vendor of a ~~ballot-marking~~
2 *remote accessible vote by mail* system from doing elections-related
3 business in the state for one, two, or three years.

4 (4) Refund of all moneys paid by a local agency for a ~~ballot~~
5 ~~marking~~ *remote accessible vote by mail* system or a part of a ~~ballot~~
6 ~~marking~~ *remote accessible vote by mail* system that is compromised
7 by an unauthorized change or modification, whether or not the
8 ~~ballot-marking~~ *remote accessible vote by mail* system has been
9 used in an election.

10 (5) Any other remedial actions authorized by law to prevent
11 unjust enrichment of the offending party.

12 (b) (1) The Secretary of State may seek all of the following
13 relief for a known but undisclosed defect, fault, or failure in a
14 ~~ballot-marking~~ *remote accessible vote by mail* system or part of a
15 ~~ballot-marking~~ *remote accessible vote by mail* system certified or
16 conditionally approved in California:

17 (A) Refund of all moneys paid by a local agency for a ~~ballot~~
18 ~~marking~~ *remote accessible vote by mail* system or part of a ~~ballot~~
19 ~~marking~~ *remote accessible vote by mail* system that is defective
20 due to a known but undisclosed defect, fault, or failure, whether
21 or not the ~~ballot-marking~~ *remote accessible vote by mail* system
22 has been used in an election.

23 (B) A civil penalty from the offending party or parties, not to
24 exceed fifty thousand dollars (\$50,000) per violation. For purposes
25 of this subdivision, each defect, fault, or failure shall be considered
26 a separate violation. A defect, fault, or failure constitutes a single
27 violation regardless of the number of ~~ballot-marking~~ *remote*
28 *accessible vote by mail* system units in which the defect, fault, or
29 failure is found.

30 (C) In addition to any other penalties or remedies established
31 by this section, the offending party or parties shall be liable in the
32 amount of one thousand dollars (\$1,000) per day after the
33 applicable deadline established in Section 19290 until the required
34 disclosure is filed with the Secretary of State.

35 (2) A penalty imposed pursuant to subparagraph (B) or (C) of
36 paragraph (1) shall be deposited in the General Fund.

37 (c) Before seeking any measure of relief under this section, the
38 Secretary of State shall hold a public hearing. The Secretary of
39 State shall give notice of the hearing in the manner prescribed by
40 Section 6064 of the Government Code in a newspaper of general

1 circulation published in Sacramento County. The Secretary of
2 State also shall transmit written notice of the hearing, at least 30
3 days prior to the hearing, to each county elections official, the
4 offending party or parties, any persons that the Secretary of State
5 believes will be interested in the hearing, and any persons who
6 request, in writing, notice of the hearing.

7 (d) The decision of the Secretary of State to seek relief under
8 this section shall be in writing and state his or her findings. The
9 decision shall be open to public inspection.

10 *SEC. 20. Section 19294 of the Elections Code is amended to*
11 *read:*

12 19294. (a) The Secretary of State may seek injunctive relief
13 requiring an elections official, or any vendor or manufacturer of
14 ~~a ballot marking remote accessible vote by mail system~~, to comply
15 with the requirements of this code, the regulations of the Secretary
16 of State, and the specifications for the ballot marking system and
17 its software, including the programs and procedures for vote
18 marking and testing.

19 (b) Venue for a proceeding under this section shall be
20 exclusively in Sacramento County.

21 *SEC. 21. Section 19295 of the Elections Code is amended to*
22 *read:*

23 19295. ~~A ballot marking remote accessible vote by mail system~~
24 ~~or part of a ballot marking remote accessible vote by mail system~~
25 shall not do any of the following:

26 (a) Have the capability, including an optional capability, to use
27 a remote server to mark a voter's selections transmitted to the
28 server from the voter's computer via the Internet.

29 (b) Have the capability, including an optional capability, to store
30 any voter identifiable selections on any remote server.

31 (c) Have the capability, including the optional capability, to
32 tabulate votes.

33 ~~SECTION 1. Section 15104 of the Elections Code is amended~~
34 ~~to read:~~

35 ~~15104. (a) The processing of vote by mail ballot return~~
36 ~~envelopes, and the processing and counting of vote by mail ballots,~~
37 ~~shall be open to the public, both before and after the election.~~

38 ~~(b) A member of the county grand jury, and at least one member~~
39 ~~each of the Republican county central committee, the Democratic~~
40 ~~county central committee, and of any other party with a candidate~~

1 on the ballot, and any other interested organization, shall be
2 permitted to observe and challenge the manner in which the vote
3 by mail ballots are handled, from the processing of vote by mail
4 ballot return envelopes through the counting and disposition of
5 the ballots.

6 (e) The elections official shall notify vote by mail voter
7 observers and the public at least 48 hours in advance of the dates,
8 times, and places where vote by mail ballots will be processed and
9 counted.

10 (d) Notwithstanding paragraph (2) of subdivision (b) of Section
11 2194, vote by mail voter observers shall be allowed sufficiently
12 close access to enable them to observe the vote by mail ballot
13 return envelopes and the signatures on the envelopes and challenge
14 whether those individuals handling vote by mail ballots are
15 following established procedures, including all of the following:

16 (1) Verifying signatures on the vote by mail ballot return
17 envelopes by comparing them to voter registration information.

18 (2) Duplicating accurately damaged or defective ballots.

19 (3) Securing vote by mail ballots to prevent tampering with
20 them before they are counted on election day.

21 (e) A vote by mail voter observer shall not interfere with the
22 orderly processing of vote by mail ballot return envelopes or the
23 processing and counting of vote by mail ballots, including the
24 touching or handling of the ballots.